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## MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") dated this 8th day of June, 2005 (the "Effective Date"), is between ePartners Incorporated, a Texas Corporation, having its principal offices at 1304 W. Walnut Hill Ln., Suite 300, Irving, TX 75038 ("ePartners" or "ePartners, Inc."), and GMA Accessories, Inc., a New York corporation, with offices located at 243 Secaucus Road, Secaucus, NJ 07094 ("Customer"). ePartners and Customer agree as follows:

### 1.0 SERVICES

1.1 Scope. ePartners will provide the consulting services to Customer subject to specific terms and conditions set forth below and as mutually agreed upon from time to time by ePartners and Customer in written service orders and as mutually agreed upon from time to time between Customer and ePartners (each, a "Service Order") (services described herein or in each Service Order are collectively referred to as the "Services").

1.2 Service Order Authorization and Modification. The Service Order(s) are to be signed on behalf of the Customer exclusively by those named hereunder or by parties as duly authorized by Customer. Any deviation from or modification to a Service Order must be agreed to by the parties in writing. In the event of any express conflict or inconsistency between the provisions of a Service Order and the provisions of this Agreement, the provisions of the Service Order will govern and control with respect to the interpretation of that Service Order; provided, however, that the provisions of the Service Order will be so construed as to give effect to the applicable provisions of this Agreement to the fullest extent possible.

### 2.0 NON-ePARTNERS PERSONNEL

2.1 If non-ePartners consultants are engaged by Customer to perform services in connection with or related to the Services, ePartners will be notified immediately, and ePartners shall not be liable for any damages, claims or costs due to any services done directly or indirectly by non-ePartners consultants.

### 3.0 FEES AND BILLING

3.1 Charges for Services. Customer will pay to ePartners the charges for fees and expenses incurred as a result of performing Services described in this Agreement or a specific Service Order made part of this Agreement. Services will be provided at ePartners then current

standard billing rates or as specified in a Service Order. Such rates may be subject to periodic adjustment by ePartners upon notice to Customer.

3.2 After Hours and Holiday Rates. Work after 6 PM on a normal workday (Monday through Friday, excluding holidays) will be billed at one and one-half of the rates detailed in the Service Order(s). Work on weekends and holidays will be billed at two times the rates detailed in the Service Order(s).

3.3 Not A Fixed Fee Contract. Unless expressly set forth in a Service Order, charges for Services are based upon hourly billing rates and are not fixed fees.

3.4 Travel Time. Travel time for ePartners personnel will be billed for one way travel from that personnel's "home office" at the normal rate for such consultant. Home Office is defined as the office in the town in which the assigned ePartners personnel reside. A minimum of two hours of consulting time will be billed for each onsite visit by each ePartners personnel.

3.5 Out-of-Pocket, General and Administrative Expenses. Customer will also pay ePartners as charges any reasonable out-of-pocket expenses incurred by ePartners in the course of providing Services to Customer. Furthermore, in the course of providing Services, ePartners does not itemize certain incidental costs associated with Customer's engagement, including, without limitation, photocopy expenses, mailing costs, cellular charges, and other communication charges. (collectively referred to as, "General and Administrative"). These costs are assessed on each invoice in a 1.75% charge against gross professional service fees.

3.6 Payment. Unless otherwise expressly provided in a Service Order with respect to the charges to be paid thereunder, ePartners will invoice Customer for charges on a weekly basis in arrears, with each invoice setting forth the



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charges related to the previous week. Any amount due to ePartners under this Agreement and each Service Order shall be payable in full upon receipt of an invoice therefore, without withholding, deduction or offset of any amounts for any purpose. Customer shall be responsible for all taxes (including sales taxes) imposed as a result of the Services, excluding only taxes based on the net income of ePartners. Any amount not paid within thirty (30) days of the date of each invoice shall be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith within thirty (30) days of the receipt of an invoice therefore will be deemed approved and accepted by Customer.

3.7 **Suspension of Services for Non-Payment.** In addition to other remedies available to ePartners regarding non-payment of due invoices, ePartners may immediately cease providing Services under any duly executed Service Order and enter into good faith discussions with Customer to resolve issues or disputes regarding the non-payment of invoices outstanding, due and payable to ePartners. In the event that such discussions do not lead to a mutually agreeable resolution, ePartners shall have the right to immediately terminate this Agreement and/or any Service Order(s) hereunder and to recover for all Services performed and/or products delivered prior to the date of such termination.

3.8 **Retainer.** ePartners may require a retainer for Services to be provided by ePartners pursuant to any particular Service Order. The retainer, if required, is due and payable to ePartners upon execution of the applicable Service Order. Any unused portion of the retainer will be refunded to Customer at the completion of Services.

#### 4.0 RESPONSIBILITY FOR THIRD PARTIES.

4.1 Customer acknowledges and agrees that ePartners is not responsible for the software, hardware, products and services of other parties. ePartners will, however, work with Customer on a hourly rate basis to attempt to resolve any problems caused by incompatibilities or failures of other parties' products or services. This includes, but is not limited to, any of ePartners

time required to research, test, evaluate, restore corrupted or erroneous data, or consult with outside technical support resources for problems caused by programming limitations or errors in software. Likewise, ePartners will bill for any time spent helping Customer troubleshoot or repair computer hardware or accessories regardless if the hardware is existing at the time of this Agreement or purchased after the date of the Agreement.

#### 5.0 WARRANTIES

5.1 **General.** ePartners and Customer each represent and warrant that as of the Effective Date: (a) it is a corporation duly organized and validly existing and in good standing under the laws of its jurisdiction of formation and has the authority to carry on its business as now conducted; (b) it has the power, authority and legal rights to execute, deliver and perform its obligations under this Agreement; and (c) the execution, delivery and performance of its obligations under this Agreement and the transactions contemplated hereby have been duly authorized by all necessary corporate action.

5.2 **ePartners' Warranty.** ePartners warrants to Customer that its personnel shall perform the Services in a good and workmanlike manner and in accordance with the specifications as expressly detailed in the applicable Service Order. In the event of a breach of the foregoing warranty, ePartners' sole obligation and Customer's exclusive remedy will be to have ePartners perform again the Services in respect of which the warranty has been breached to bring them into compliance with such warranty. Any claim for breach of the foregoing warranty must be made by notice to ePartners within two weeks of completion of the Services in respect of which the claim is made or said claim shall be deemed waived.

5.3 **Customer's Warranties.** Customer represents and warrants that the information furnished by Customer to ePartners on which ePartners based the description of the Services and the charges to be paid by Customer therefore, as set forth in each Service Order, is accurate and complete in all material respects to the best of its knowledge.

#### 6.0 WARRANTY DISCLAIMER

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1. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, EPARTNERS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR RESULTS TO BE DERIVED FROM THE USE OF, ANY SERVICE, SOFTWARE, OR OTHER MATERIALS PROVIDED UNDER ANY SERVICE ORDER. EPARTNERS DOES NOT REPRESENT OR WARRANT THAT THE OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY TO THIS AGREEMENT AND RECOGNIZES AND AGREES THAT THIS PROVISION IS AN INTEGRAL PART OF EPARTNERS' PRICING AND AN IMPORTANT FACTOR IN ITS WILLINGNESS TO PERFORM SERVICES HEREUNDER.

#### 7.0 INDEMNITIES AND LIMITATION OF LIABILITY

- 7.1 **Infringement Claims.** Subject to the limitations set forth in Section 7.3, ePartners and Customer each agree to indemnify, defend and hold the other harmless against any action to the extent that such action is based upon a claim that the software (other than, with respect to ePartners, third-party software provided by ePartners) or Confidential Information provided by the indemnitor, or any part thereof, infringes upon the intellectual property rights of any third party.
- 7.2 **Third Party Indemnification of ePartners.** Customer acknowledges that by entering into and performing its obligations under this Agreement and each Service Order, ePartners will not assume and should not be exposed to the business and operational risks associated with Customer's business, and Customer therefore agrees, subject to Section 7.3, to indemnify, defend and hold ePartners harmless from any and all third party claims, actions, damages, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or related to the conduct of Customer's business, including, without limitation, the use by Customer of the Services.

- 7.3 **Procedures.** All indemnification obligations under this Section 7.0 shall be subject to the

following requirements: (a) the indemnified party shall provide the indemnifying party with prompt written notice of any claim; (b) the indemnified party shall permit the indemnifying party to assume and control the defense of any action upon the indemnifying party's written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of the indemnified party, such assumption would result in a material conflict of interest); and (c) the indemnifying party shall not enter into any settlement or compromise of any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. In addition, the indemnified party may, at its own expense, participate in its defense of any claim. In the event that the indemnifying party assumes the defense of any such claim, the indemnifying party shall have no liability for attorney's fees and costs incurred by the indemnified party.

- 7.4 **Liability.** Neither party shall be liable to the other for any incidental, indirect, exemplary, special or consequential damages, under any circumstances, including, but not limited to, lost profits, revenues, or savings, or the loss or use of any data, even if that party had been advised of, knew, or should have known, of the possibility thereof. Under no circumstances shall ePartners' aggregate cumulative liability hereunder, whether in contract, tort (including, without limitation, negligence), or otherwise, exceed the total amount of fees actually paid to ePartners under the Service Order from which the claim arises. Furthermore, under no circumstances shall Customer's aggregate cumulative liability hereunder, whether in contract, tort (including, without limitation, negligence), or otherwise, exceed the total amount of fees actually paid or payable to ePartners under the Service Order from which the claim arises. Customer acknowledges that the fees paid by it reflect the allocation of risk set forth in this Agreement and that ePartners would not enter into this Agreement without these limitations on liability. Notwithstanding the foregoing, the limitation provisions of this Section 7.4 shall not apply to any claim or action arising under the confidentiality provisions or indemnification provisions of this Agreement.

#### 8.0 TERM AND TERMINATION

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8.1 **Term.** This Agreement shall be effective as of the Effective Date, as detailed in the preamble of this Agreement and thereafter shall remain in effect until the Services specified in any applicable Service Order have been completed. This Agreement shall not be renewed or extended except by another Service Order stating that the Services to be completed thereunder and signed by Customer and accepted by ePartners. Issuance and acceptance of such Service Order shall automatically reinstate this Agreement if it has lapsed after completion of a previous Service Order.

8.2 **Termination.** This Agreement may be terminated by either party without cause by giving the other party thirty (30) days prior written notice. In addition, this Agreement and/or any duly executed Service Order may be terminated by ePartners immediately upon written notice in the event Customer fails to perform its obligation for payment of invoices pursuant to this Agreement. In such event, ePartners shall have the right to terminate this Agreement and all Service Orders thereunder forthwith and to recover for all Services performed and/or products delivered prior to the date of termination. Customer shall be liable for all costs of collection including reasonable attorney's fees incurred by ePartners to enforce its rights under this Agreement.

8.3 **Effect of Termination.** Upon termination of this Agreement: (a) Customer shall promptly pay all amounts payable to ePartners for Services rendered and out-of-pocket expenses incurred up to the date of termination; and (b) each party shall return or destroy, at the direction of the other party, all the other party's Confidential Information in its possession.

## 9.0 CONFIDENTIALITY

9.1 **Scope of Obligation.** In connection with the Services performed under this Agreement, the parties may have access to the other party's Confidential Information. "Confidential Information" means non-public information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential and information received from others that the disclosing party is obligated to treat as confidential. Confidential Information

includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods, as well as, information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine readable. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information, but in no event less than a reasonable standard of care. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. A party's Confidential Information may only be used by the other party in order to fulfill its obligations under this Agreement.

9.2 **Exceptions.** Confidential Information shall not include any information that: (a) is already known to the receiving party or its affiliates, free of any obligation to keep it confidential; (b) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (c) is received by the receiving party from a third party without any restriction on confidentiality; (d) is independently developed by the receiving party or its affiliates; (e) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (f) is approved for release by prior written authorization of the disclosing party.

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9.3 **Retained Rights.** Neither party is obligated to restrict the future work assignments of people who have had access to Confidential Information. In addition, the parties and these people are free to use the information that these people retain in their unaided memories related to information technology, including ideas, concepts, know-how or techniques, so long as such use does not disclose Confidential Information of the other party in violation of this Section 9. This use will not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate licenses.

9.4 **Irreparable Harm.** Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate.

9.5 **Survival of Obligation.** The terms and provisions of this Section 9.0 shall survive any expiration or termination of this Agreement.

#### 10.0 WORK PRODUCT

10.1 **General.** Unless this Agreement is terminated by ePartners for Customer's material breach or failure to make payments to ePartners, ePartners hereby grants to Customer a perpetual, royalty-free, nontransferable, nonexclusive license to use, solely for Customer's internal business purposes, the object code form of any application software programs or deliverables created by ePartners in performing the Services hereunder.

10.2 **Development Tools.** Notwithstanding anything to the contrary in this Agreement, ePartners will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Services which are based on trade secrets or proprietary information of ePartners or are otherwise owned or licensed by ePartners. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require ePartners or

Customer to violate the proprietary rights of any third party in any software or otherwise.

10.3 **Further Assurances.** ePartners and Customer agree to execute and deliver such other instruments and documents as either party reasonably requests to evidence or effect the transactions contemplated by this Section 10.0. The provisions of this Section 10.0 will survive the expiration or termination of this Agreement and each Service Order for any reason.

#### 11.0 RIGHT TO ENGAGE IN OTHER ACTIVITIES.

11.1 Except as to the restrictions regarding Confidential Information herein, Customer acknowledges and agrees that nothing in this Agreement or any Service Order will impair ePartners' right to perform services or acquire, license, market, distribute, develop for itself or others or have others develop for ePartners similar technology performing the same or similar functions as the technology and Services contemplated by this Agreement or any Service Order.

#### 12.0 HIRING OF OTHER PARTY PERSONNEL

12.1 For a period of one (1) year from the expiration or termination of each applicable Service Order, Customer and ePartners agree not to directly solicit the employment of any personnel or agent of the other party who has been directly involved with the delivery of Services under a Service Order unless Customer or ePartners, whichever the case may be, grants its consent in writing. Direct solicitation will not include general solicitations by the parties through the use of advertisements in newspapers, trade publications, or other solicitations not directed at particular individuals. If this condition is breached, the breaching party agrees to compensate the other party with a sum equal to four (4) times the average monthly salary received by such individual during the last six (6) months which the individual was employed by the former party employer.



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**13.0 INDEPENDENT CONTRACTOR**

13.1 ePartners is an independent contractor. Neither ePartners nor Customer are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.

**14.0 ARBITRATION**

14.1 Except for collection actions for payment of charges and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this Agreement or to its breach shall be settled by final and binding arbitration by a single arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association, pursuant to an arbitration held in Dallas County, Texas, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs and attorney fees related to any arbitration proceedings hereunder.

**15.0 ASSIGNMENT**

15.1 Customer may not assign its rights or obligations under this Agreement without the prior written consent of ePartners, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may assign this Agreement to an entity who acquires substantially all of the stock or assets of such party; provided that consent will be required in the event that ePartners reasonably determines that the assignee will not have sufficient capital or assets to perform its obligations hereunder. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.

**16.0 GOVERNING LAW**

16.1 This Agreement and each Service Order shall be governed by and construed in accordance with the laws of the State of Texas, without reference to conflict of laws principles. Customer hereby irrevocably consents to the jurisdiction of the state courts of the State of Texas and U.S. District Court for the Northern District of Texas.

**17.0 NOTICE OF SERVICE**

17.1 Service of all notices under this Agreement shall be sufficient if made by registered mail to the specific party involved herein at its respective address noted in the preamble to this Agreement.

**18.0 ENTIRE AGREEMENT AND MODIFICATIONS**

18.1 Each party acknowledges that it has read this Agreement and the Service Orders attached thereto, and further agrees that the Agreement, and the Service Orders thereto are the complete and exclusive statement of the parties and supersedes all prior or contemporaneous proposals, understandings, and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any customer request for proposal or the standard printed terms on any Customer purchase order. No modification, amendment, supplement to or waiver of this Agreement shall be binding upon the parties hereto unless made in writing and duly signed by both parties. No waiver by either party of any breach by the other party of any of the provisions of this Agreement or any duly executed Service Order hereunder shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

**19.0 SEVERABILITY**

19.1 In case any one or more of the provisions contained in this Agreement or any duly executed Service Order shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein.



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provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.

**20.0 FORCE MAJEURE**

20.1 Neither party shall be responsible for failure to perform under this Agreement when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

**21.0 AGREEMENT HEADINGS AND NUMBERING**

21.1 Paragraph headings and numbers used in this Agreement are included for convenience of reference only, and, if there is any conflict between any such numbers and headings, and the text of the Agreement, the text shall control.

**22.0 EXECUTION OF AGREEMENT**

22.1 This Agreement may be executed in one or more counterparts, each of which shall be considered and original, but all of which together shall constitute one and the same instrument.

\* \* \*



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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the authorized officers of the parties hereto, to be effective as of the Effective Date.

ePartners, Inc.

By: Eric K. Forgo

Name: Eric K. Forgo

Title: Regional VP of Professional Services

GMA Accessories, Inc. ("Customer")

By: William H. Alford

Name: William H. Alford

Title: CEO